CF0000058128

CrA 894/94 (2)

Division Bench (Criminal)

/- APPEAL OF PRISONER -/

No. F 23 Name श्रीमती लखमी बाई

Father's Name ~~कटीराम~~ w/o Residence ग्राम - मुदला
थाना - नारायणपुर बस्तर

Age 39 Sentenced to आजीवन कारावास on

11.5.94 under Section 302 I.P.C by अपर सत्र न्यायालय
जगदलपुर

S.T.No. 418/92

It is explained to the prisoner that if he states or Wishes to be represented by a legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear with in seven days he may be heard at all if the prisoner states that the does not wish to be represented by legal practioner the Court may proceed at once with the case and will not be obliged to give a hearing to any legal proctitioner who shoud appear.

1. Date of application for copy of Judgement: No.
2. Date of which copy received:- 11.5.94
3. Date on which Appelisent:- 18.5.94
4. Whether the prisoner wished to be represented or not Yes/~~No.~~

No. 23 Name श्रीमती लखमी बाई w/o ~~कटीराम~~

Continued in 30/11/92 to 10/5/94 Jail Jagdalpur.

No 50 ~~EE~~ / octogon. / 94 Dated 18/5/94

Forwarded to the CHIEF JUDICIAL MAGISTRATE Jagdalpur. togather with a copy of judgement or order passed in the case for favour of transmission to the proper Appliate Court.

अधीक्षक
जिला कारागार
जगदलपुर
18/5/94
Superintendent-Central/Distt./Sub-Jail.

Date of receipt in C.J.M's Office. 24/5/94

Date of receipt of record of accompany.

Memo of Appeal of the Appelliate Court:

No. 16/94 Dated 30/5/94

Forwarded to the Session Judge, Jagdalpur

C.J.Magistrate
CHIEF JUDICIAL MAGISTRATE
JAGDALPUR

Date of receipt of Appelliate Court 30/5/94

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(23)

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

D.B. : Hon'ble Shri Lal Chand Bhadoo, J. and
Hon'ble Shri Dhirendra Mishra, J.

10-02-2006

Mr. Sushil Dubey, learned counsel for the appellant.
Mr. Akhil Mishra, learned Panel Lawyer for the State/respondent.

Arguments heard.

ORAL JUDGMENT

1. The appellant has preferred this appeal against the judgment dated 11-5-1994 passed by Additional Sessions Judge, Kanker in Sessions Trial No.418/92, by which, he, after holding the appellant guilty under Section 302 of the Indian Penal Code, has convicted and sentenced her to undergo life imprisonment.

2. The case of the prosecution, as appears from the charge-sheet, is that the appellant and the deceased are wife and husband. On 2-7-1992, at about 10 P.M., the appellant went to Chatur Singh, Kotwar and stated that she has assaulted her husband namely Katti with the help of Rammer, whereupon Chatur Singh, Sannu, Soma and other villagers went to the house of the appellant and found the husband of the appellant lying dead in his house. On being asked by the Sarpanch, the appellant

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	confessed her guilt and stated that she killed the deceased with the help of Rammer and Kitchen Knife out of anger, as the deceased was quarreling after consuming liquor. Chatur Singh, P.W.-1 went to the Police Station, Narayanpur on 4-7-1992 at about 14-15 Hours and lodged the First Information Report, Ex.P-1. During investigation, the Police conducted inquest of Ex.P-11 after due notice to the witnesses in their presence. Thereafter, the dead-body of the deceased Katti was sent for autopsy to Primary Health Centre, Narayanpur and Dr. Shashikala Thakur, P.W.-4, after conducting post mortem, submitted her report Ex.P-2. On post mortem, P.W.-4, the doctor, performing autopsy, found incised wound over the chin of the deceased and a lacerated wound over right parietal region. She also found contusion over the head of the deceased and a contusion over his right chin. Another contusion was found on the left side of the head and bone of the upper part of the nose was found broken. In the internal examination, clotted blood was found in the right parietal region. However, other internal part of the body was found intact. According to the opinion of the doctor, performing autopsy, the cause of death was cerebral hemorrhage due to injury over the head. Blood stained soil and plain soil were recovered from the place of incident vide Ex.P-4. Blood stained Rammer and a Knife also blood stained were	

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	seized vide Ex.P-5. Above seizures were made on the basis of memorandum, Ex.P-6. Spot map was got prepared vide Ex.P-7 and the accused was taken into custody vide arrest memo, Ex.P-8. The seized articles were sent for chemical examination to Forensic Science Laboratory, Sagar and the report of the Forensic Science Laboratory is Ex.P-9. According to the report of the Forensic Science Laboratory, the Rammer, Knife and blood stained soil were containing blood. The clothes of the deceased, sent by the doctor after performing autopsy, were seized vide Ex.P-12. After recording diary statements of the witnesses, charge-sheet was filed in the Court of Additional Chief Judicial Magistrate, Kanker, who, in turn, committed the case to the Sessions Judge, Jagdalpur. Learned trial Court i.e. learned Additional Sessions Judge, Kanker received the same on transfer for trial. 3. Learned counsel for the appellant submits that the case is based on circumstantial evidence. However, even if the involvement of the appellant is established, the manner in which the offence alleged to have been committed under the sudden and grave provocation because of the ill-treatment meted by her husband after taking liquor, the offence falls under Exception 4 to Section 300 of the Indian Penal Code and, therefore,	

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

the appellant could be convicted under Section 304 Part II of the Indian Penal Code and the Court below was not justified in holding the appellant guilty under Section 302 of the Indian Penal Code. On the other hand, learned counsel for the State supports the impugned judgment.

4. We have heard learned counsel for the parties. Homicidal death of the deceased is not in dispute. Even otherwise taking into consideration the statements of P.W.-1, Chatur Singh, P.W.-2, Sannu and P.W.-3, Soma, before whom the appellant has made extra judicial confession and further considering the post mortem report, Ex.P-9, homicidal death of the deceased is established. The second question for adjudication of this appeal is whether the appellant was responsible for causing the death of the deceased. P.W.-1, Chatur Singh, the Kotwar of Village Kudlathana has stated in his statement that on the date of incident, in the night, when he was sleeping in his house, the appellant Lakhmibai came to his house and woke him up and stated that she had a quarrel with her husband, whereupon, he, along with Sannu, Soma, Bassu and Doga went to the house of the appellant and saw that her husband Katti was lying with head injury and they found that Katti was dead. On enquiry, as to how Katti died, Lakhmibai confessed that she has assaulted him with

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Rammer used for ramming paddy and has also stabbed his chin by Kitchen Knife. She also stated that Katti came back home intoxicated and was assaulting the children, and because of this, under frustration, she assaulted him with Rammer. She further stated that the deceased used to harass and beat her and her children after intoxication. P.W.-2, Sannu has also given statement in the same line and has stated that the deceased used to assault his wife and children and, therefore, the appellant confessed that she assaulted the deceased with Rammer and Kitchen Knife under provocation. The statement of P.W.-1, Chatur Singh is corroborated by the statement of P.W.-3, Soma as also the statement of P.W.-4, Dr. Shashikala Thakur, who has opined the injuries present over the person of the deceased, as stated in the foregoing paras.

5. It is not disputed that the offence was committed in a spur of moment without premeditation as a result of provocation given by the deceased, who returned to his home in intoxicated condition and started abusing and assaulting the appellant as also his children and as a result of this provocation, the appellant, who is a lady, picked-up the Rammer lying in the house and gave few blows to the deceased over his head. P.W.-4, Dr. Shashikala Thakur has not found any fractural injury on internal

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

examination over the head of the deceased, and except one incised wound over the chin, all the injuries are lacerated wound.

6. Taking into consideration the totality of the circumstances, statements of the witnesses P.W.-1, Chatur Singh, P.W.-2, Sannu and P.W.-3, Soma and further considering the nature of the injuries present over the person of the deceased, we are of the considered opinion that, the appellant was responsible for causing the injuries to the person of the deceased. We are also of the opinion that, the appellant was having knowledge that the injuries, so caused, could cause death of the deceased. However, from the facts and circumstances of the case, intention to cause death of the deceased cannot be attributed to the appellant as the incident took place in a spur of moment and sudden and grave provocation and as such the offence does not travel beyond Section 304 Part II of the Indian Penal Code.

7. In the result, the conviction of the appellant under Section 302 of the Indian Penal Code by the learned Additional Sessions Judge is set aside, and instead, we hold the appellant guilty of offence under Section 304 Part II of the Indian Penal Code and accordingly convict and

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	sentence her to undergo rigorous imprisonment for 10 years. From perusal of the record, it appears that, the appellant is in jail since 13-11-1992 and as such she has already completed more than 13 years in jail. In the aforesaid circumstances, it is directed that, the appellant be set at liberty forthwith, if she is not required in connection with any other offence. Accordingly, the appeal stands disposed of. Sd/- L.C.BHADOO Judge	Sd/- DHIRENDRA MISHRA Judge